

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 11

COMMUNITY PHYSICIANS SERVICES
CORPORATION (CPSC)

Employer

and

Case No. 11-RC-6621

UNITED STEEL, PAPER & FORESTRY, RUBBER,
MANUFACTURING, ENERGY, ALLIED INDUSTRIAL &
SERVICE WORKERS INTERNATIONAL UNION (USW)

Petitioner

DECISION AND DIRECTION OF ELECTION

The Petitioner seeks to represent a unit comprised of all full-time and regular part-time Licensed Practical Nurses (LPN's), Certified Nursing Assistants (CNA's), Certified Medical Assistants (CMA's), switchboard operator, check-in clerks, check-out clerks, check-in and check-out clerks, lead office clerk, medical records clerks, insurance referral clerks, billing clerks, and transcriptionists who are employed at the Employer's primary care medical facilities located in Norton, Wise and Clintwood, Virginia, excluding physicians, registered nurses, nurse practitioners, certified registered nurse anesthetists, pharmacist, pharmacy technicians, professional employees, guards, supervisors and all other employees excluded by the Act.¹

At the hearing, the parties mutually agreed to exclude from the bargaining unit a variety of positions, including physicians, registered nurses, nurse practitioners, certified

¹ In its petition, the Petitioner initially sought to represent all professional and non-professional employees at the Employer's facilities located in Wise and Dickenson counties, but amended its petition at the hearing to exclude professional employees.

registered nurse anesthetists, pharmacists, pharmacy technicians, professional employees, guards and supervisors as defined in the Act. However, the parties were unable to reach agreement on the scope and composition of the remainder of the proposed unit. The Employer contends that the petitioned-for unit is inappropriate in that the clerical employees have interests that are disparate from LPN's, CNA's and CMA's, hereinafter referred to collectively as "medical nursing employees" or "medical nurses." The Petitioner maintains that the clerical employees and medical nursing employees share a community of interest with each other, and, therefore, should be included in an appropriate unit.

The Employer further contends that, should the Regional Director determine that a combination of medical nursing employees and clerical employees should be appropriately included in the unit, the billing clerks, insurance referral clerks and switchboard operator should be excluded from such a unit as business office clerical employees. In its brief, the Employer also asserts that the petitioned-for single unit should be determined to be inappropriate.² Instead, the Employer argues that six separate units are required in this matter.

The parties submitted briefs which have been carefully considered. As shown below, I will consider whether medical nursing employees and clerical employees share a community of interest, such that they should be properly included in an appropriate unit. Next, I will review that remaining clerical classifications in dispute and determine whether they are properly included or excluded from the unit. Finally, I will address whether a single unit consisting of all six facilities, as opposed to six separate units, is appropriate. With respect to the inclusion of medical nursing employees in the same unit

² The Employer did not make this argument at hearing.

as clerical employees, I conclude that the two groups of employees share a substantial community of interest with each other, and I shall include them in a single unit. I also find that the positions of switchboard operator, billing clerks and insurance referral clerks are appropriately included in the unit, and further, that a facility-wide unit is appropriate.

I. BACKGROUND: THE EMPLOYER'S OPERATIONS

The Employer, a Virginia corporation, operates six primary care medical facilities located in Norton, Wise and Clintwood, Virginia. The majority of the Employer's operations are housed in Norton, where a grouping of buildings, Medical Arts Buildings 1, 2 and 3, form a medical campus located in close proximity to Norton Community Hospital. The Employer's main facility is located in Medical Arts Building 1, where it provides internal medicine and family medicine services. In regard to clerical employees, there are three check-out clerks, two check-in clerks, three medical records clerks, five billing clerks, one switchboard operator, and one insurance referral clerk employed in Medical Arts Building 1, which encompasses about 9,000 square feet. In regard to medical nurses, there are eight LPN's, one CMA and one CNA employed in Medical Arts Building 1. The interior of this building is configured in a horseshoe shape, with physicians' offices, nurse's stations and treatment areas situated on the long sides, and with the business office housed along the short side of the horseshoe. The switchboard operator, billing clerks, insurance referral clerk, and medical records clerks are located in the business office. The Employer's Specialty Clinic, which employs one check-in and check-out clerk and one LPN, is located in Medical Arts Building 2, which encompasses about 1,500 square feet. The NorWise OB/GYN Clinic, where the Employer provides services in obstetrics and gynecology, is located in Medical Arts Building 3 and covers

about 9,000 square feet. The clerical employees who work at the NorWise OB/GYN Clinic include one lead office clerk, one medical records clerk, one check-in clerk, one check-out clerk, and one transcriptionist. In regard to medical nurses at this clinic, there are four LPN's and one CMA.

The Employer's remaining facilities include OccuMed, Wise Professional Office Building, and Dickenson Medical Associates. OccuMed is located in the Norton Square Shopping Center, a short distance from the Employer's Medical Arts Building campus, and covers about 4,000 square feet. At this facility, the Employer provides occupational rehabilitation services, drug testing and other medical services. The clerical employees working at OccuMed include one transcriptionist, one check-in clerk and one check-out clerk. The medical nurses include two LPN's. The Employer's Wise Professional Office Building, which covers about 3,000 square feet and is located in Wise about five miles from the Norton medical campus, employs one check-in and check-out clerk,³ one LPN and one CNA. The Dickenson Medical Associates facility, located in Clintwood about thirty miles from the Norton medical campus, employs four clerical employees, including one check-in clerk, one check-out clerk, one medical records clerk and one insurance referral clerk, and five medical nurses, including four LPN's and one CMA.

The Employer's Director of Community Physicians, Jane Sturgill, testified on behalf of the Employer. She stated that she reports directly to Chief Executive Officer (CEO) David Fuqua, who is the Employer's highest ranking manager and is responsible for all six facilities. Sturgill has direct authority over all of the facilities except OccuMed, which has its own director, who reports to CEO Fuqua. With the exception of

³ This employee is also identified by the Employer as "receptionist" and also performs medical records duties at the facility.

the clerical employees and medical nurses employed at the OccuMed facility, Sturgill directly supervises all of the medical nursing and clerical employees. She is responsible for all hiring and firing of non-professional employees, as well as for performing evaluations on all non-professionals.

The Employer provides both in-patient and out-patient medical services at each of its facilities. Sturgill stated that all of the medical offices are set up in a similar manner. Within each office, all employees use the same time clocks, copy and fax machines, break rooms, parking areas and rest room facilities; work in close proximity to each other; and experience frequent contact with one another during the course of their work days. Both categories of employees interact with patients. Employees facility-wide receive the same retirement, health and insurance benefits.

II. WHETHER MEDICAL NURSES AND CLERICAL EMPLOYEES SHOULD BE INCLUDED IN AN APPROPRIATE UNIT

A. Duties and Responsibilities of LPN's, CNA's and CMA's

All three medical nursing classifications in issue, LPN's, CNA's, and CMA's, provide direct medical care to patients at the Employer's facilities. In all, there are 20 LPN's, three CNA's and two CMA's employed at the Employer's facilities. These medical nurses share the same duties and responsibilities, with the exception that only CMA's are allowed to dispense medication to patients. Each medical nurse is assigned to work with a physician at one of the respective facilities. All medical nurses are required to be licensed by the Commonwealth of Virginia. With respect to educational requirements, CNA's must complete one year of college, whereas LPN's and CMA's are required to complete two years of college. Starting pay for LPN's is \$8.00 an hour, and for both CNA's and CMA's, \$7.00 an hour. The record does not reflect the upper range

of pay for the medical nurses. The work schedule of the medical nurses runs from 8:30 a.m. to 5:00 p.m. These employees generally perform routine medical procedures, such as taking blood pressure and temperatures and assisting in minor surgical procedures, and work closely with their assigned physicians and other medical personnel. However, the record reflects that medical nurses have close working contact and interaction with clerical employees as well. Specifically, medical nurses routinely obtain patient files from clerical employees, including medical records clerks; on occasion ask for help from check-in or check-out clerks or medical records clerks when dealing with patients; interact with medical records clerks when scheduling appointments; and confer with insurance referral clerks when asked for information about various procedures. The record also establishes that medical nurses and clerical employees engage in informal socializing during the work day.

B. Duties and Responsibilities of Clerical Employees

There are a total of 29 clerical employees, each of whom is assigned to one of the facilities. The employee classifications included in the clerical category are check-in clerk, check-out clerk, check-in and check-out clerk, medical records clerk, switchboard operator, insurance referral clerk, receptionist, transcriptionist, billing clerk and lead office clerk. Check-in clerks are responsible for greeting patients when they enter the facility, gathering vital information related to the patient's medical conditions, and entering this information in the computer. The check-in clerk also secures a copy of the patient's insurance card, attaches it to the patient's medical chart, and places it in the physician's box for the nurse to retrieve when the patient is ready to be seen by the physician. After treatment by the physician, the patient then meets with the check-out

clerk, who is responsible for scheduling follow-up appointments and having the patient complete documents related to the medical visit. The check-out clerk may also provide the patient with a copy of a lab order. The check-in and check-out clerks are responsible for both sets of duties. The medical records clerk is responsible for maintaining medical records for all patients. There is one switchboard operator who is located in the business office in Medical Arts Building 1. Her sole function is to answer and refer telephone calls to the appropriate location within the building; she answers more than 2,000 phone calls daily. There are two insurance referral clerks located, respectively, in the business office in Medical Arts Building 1 and in the Dickenson Medical Associates Building. They are responsible for contacting insurance companies after the physician has made a diagnosis that requires the performance of an expensive procedure, such as an MRI. This function is done to insure that the insurance company will cover the particular test. There are two transcriptionists who are located, respectively, in Medical Arts Building 1 and 3. They are responsible for transcribing all dictation by physicians for patient medical charts and files. There are five billing clerks, who are located in the business office in Medical Arts Building 1. They are primarily responsible for patient billing. In this regard, they receive the patient's charge sheet, which shows all services rendered, then assign a code for the particular medical procedure, after which they enter the charge into the computer and generate the patient's bill. Billing clerks then forward the bill to the patient's insurance company for payment and also contact insurance companies regarding patient bills or reimbursements. They handle patient billing for all Employer facilities except those located at Dickenson Medical Associates Building. The lead office clerk works in Medical Arts Building 3. This employee performs the same duties as the check-in and

check-out clerk as well as medical records clerk. The lead office clerk also calls insurance companies to insure that patients who are pregnant have medical insurance coverage.

The record indicates that most clericals work from 8:30 a.m. to 5:00 p.m., however, some clericals work from 8:00 a.m. until 4:30 p.m. Starting pay for most clerical employees ranges from \$7.00 per hour to \$7.50 per hour, with billing clerks starting at \$8.00 per hour.⁴ The record does not reflect the higher range in the pay scale for clericals. As set out above, there is significant daily contact between clericals and the medical nurses. This contact occurs both during the performance of routine work duties, such as in locating and retrieving medical charts and scheduling appointments, as well as in opportunities for socializing during the day. The record contains testimony on this specific point from both an LPN and a check-in clerk. The LPN testified that she had been instructed to perform clerical tasks such as filing, pulling charts, answering phones and working in medical records during periods when her normal nursing duties were not required. Correspondingly, the check-in clerk stated that she had assisted patients as they attempted to maneuver their wheelchairs and that she had communicated directly with physicians in asking questions concerning prescriptions for patients.

C. Analysis

As shown above, the Petitioner seeks to represent a unit of medical nurses comprised of LPN's, CNA's and CMA's, as well as all clerical employees. The Employer seeks to exclude all medical nurses on the ground that the petitioned-for unit is overly broad and inappropriate because it seeks to combine categories of employees who

⁴ The record is somewhat unclear on the actual starting pay for clericals other than the billing clerks. The Director of Community Physicians initially testified that this starting pay was \$6.00 an hour, then subsequently testified that the amount had recently been increased to about \$7.00.

have a disparity of interest from one another. In this regard, it is noted that the Board customarily considers medical nurses such as LPN's to be technical employees on the basis of special education, qualification examinations and licensure by the state.

Hillhaven Convalescent Center, 318 NLRB 1017, 1018, n.6 (1995) However, as explained in Park Manor Care Center, 305 NLRB 872, 876 (1991), a finding of technical status does not automatically lead to exclusion from the broader unit, or to finding appropriate a separate technical unit, as is asserted by the Employer herein. Rather, whether technical employees may constitute a separate appropriate unit depends on their relationship to other nonprofessional employees.

In considering the appropriateness of a bargaining unit, Congress instructed the Board to make unit findings so as “to assure to employees the fullest freedom in exercising the rights guaranteed by the Act.” 29 U.S.C. Section 159(b). It is settled that the Act does not require that a bargaining unit be the most appropriate unit, only that it be an appropriate unit. Overnite Transportation Co., 322 NLRB 723, 723 (1996).

The Board has sought to limit the proliferation of bargaining units in the health care industry both through case law and its rulemaking. In Park Manor Care Center, 305 NLRB 872 (1991), the petitioner sought a unit of service and maintenance employees in a nursing home, excluding technical employees. In that case, the Board set forth its “empirical community of interests” test for determining appropriate bargaining units in non-acute health care facilities. Under that test, the Board considers community of interest factors as well as those factors considered relevant by the Board in its rulemaking proceedings concerning collective bargaining units in the health care industry. Id. at 875 & n.16. The Board indicated that factors to be examined in making such a unit

determination included education and training, pay comparisons, distinct functions, contact with other employees, and the relative size of the technical employee group. Id. at 875-877. See generally Hillhaven Convalescent Center, 318 NLRB at 1017 (“whether . . . technical employees may constitute a separate appropriate unit depends on their relationship to other nonprofessional employees”). The analysis with respect to non-acute primary health care facilities is based on the rationale that employees at smaller health care facilities typically have more contact and share more interests with other employees than do employees at larger hospitals. Park Manor Care Center, 305 NLRB at 876, Hillhaven Convalescent Center, 318 NLRB at 1018.

In the present case, the record supports the inclusion of medical nurses in a single unit with all clerical employees employed at the Employer’s various nonacute care facilities in Norton, Wise and Clintwood, Virginia. A comparison between the duties and responsibilities of medical nurses and clericals shows that the former have greater educational requirements and must be licensed by the Commonwealth of Virginia. However, other community of interest factors clearly demonstrate a close working relationship between the medical nurses and clerical employees. Particularly significant is the frequent contact between the two groups, the close proximity of their work areas, and the similarity of their working conditions, including that they share the same benefits, supervision, break and parking areas, office equipment, and work schedules. With respect to wages, the record does not reflect a large disparity in wages paid to medical nurses as opposed to clericals. In this regard, the starting pay for both LPN’s and billing clerks is \$8.00 an hour; the starting pay for CNA’s and CMA’s is \$7.00 an hour; and for

the remaining clerical classifications, either \$6.00 or \$7.00 an hour. These moderate wage differentials do not defeat a finding of community of interest.

Thus, on the basis of the above, I conclude that the medical nurses share a sufficient community of interest with clerical employees such that it is appropriate to include the two groups in a single unit. I shall, therefore, include both medical nurses and clerical employees in the unit sought by the Petitioner.

In finding that a unit consisting of clerical employees and medical nurses is an appropriate unit, I shall also include the clerical classifications of billing clerk, switchboard operator and insurance referral clerks in the appropriate unit. The record reflects that the billing clerks, switchboard operator and one of the insurance referral clerks are located in the business office, in Medical Arts Building 1. The second insurance referral clerk is located in the Dickenson Medical Associates building. These employees are commonly supervised, enjoy the same benefits, and have similar wages as other unit employees. Moreover, while most of these employees in the disputed classifications are located in the business office in the Medical Arts Building 1, they are centrally located in this building and work in close proximity with other unit employees. In that regard, medical records clerks are also housed in the business office of Medical Arts Building 1.

Most significant, as set out above, the work done by these employees is functionally integrated with and closely aligned with the work done by other clerical employees in the unit, who constitute a small employee complement. While these employees may have limited interaction with other employee groups in the performance of their job duties, these disputed positions perform the type of clerical functions that are

appropriately included in non-professional units such as the unit found appropriate herein. See, e.g., Appalachian Regional Hospitals, Inc. 233 NLRB 542 (1977) (After noting that business office clericals usually share a community of interest separate from other health care institutions, Board include business clericals in same unit as service, maintenance and technical employees; Board relies in part, on small employee complement, employee contact and common supervision.)

In finding that the billing clerks, switchboard operator and insurance referral clerks should be included in the unit, I find the cases cited by the employer, St. Catherine's Hospital of Dominican Sisters of Kenosha, Wisc., Inc. 217 NLRB 787 (1975) and Valley Hospital, Ltd., 270, 220 NLRB 1339 (1975) to be distinguishable from the present case. Both St. Catherine's and Valley Hospital, involved acute care hospitals, in which the Board found the employees in question to be business office clericals. In St. Catherine's, the Board found a separate office clerical unit to be appropriate and in Valley Hospital, the Board excluded business office clericals from a unit of non-professionals. However, in both cases, the Board failed to find that the office clericals shared a community of interest with other medical and clerical personnel. In this regard, the Board has recognized a distinction between acute care hospitals and non-acute health care facilities, such as those at issue here, based on the rationale that employees of smaller health care facilities typically have more contact and share more interests with other employees than do employees at larger hospitals. Park Manor Care Center, supra. Accordingly, I shall include billing clerks, the switchboard operator and insurance referral clerks in the unit. Lincoln Park Nursing Home, 318 NLRB 1160 (1995)

III. WHETHER A FACILITY-WIDE UNIT IS APPROPRIATE

In finding that a facility-wide unit consisting of all clerical employees and medical nurses is appropriate, I reject the Employer's contention that a finding of six separate facility units is appropriate. In support of this contention, the Employer cited St. Luke's Health Sys. Inc., 340 NLRB 1171 (2003), which is distinguishable from the present case. In St. Luke's, the Petitioner sought to represent a unit of registered nurses at one of the Employer's 11 family-practice clinics. The employer also operated an acute care hospital, a college and a nursing home. In remanding the case to the Regional Director, the Board found a single-facility unit to be inappropriate. However, in contrast to the case in St. Luke's, the Petitioner here has petitioned for facility-wide unit consisting of all facilities rather than petitioning for one facility out of many. Moreover, the Employer's operation herein does not include an acute health care hospital as was the case in St. Luke's. In view of the geographic proximity of the Employer's facilities, administrative centralization, common working conditions and benefits, and common supervision, I find that the Employer has failed to rebut the appropriateness of a single facility-wide unit. See West Jersey Health Systems, 293 NLRB 749 (1989). Further, there is no showing that each of the Employer's facilities operates autonomously. Indeed, the Employer's Director stated that if the need arose, she would transfer employees to facilities where they did not normally work. Accordingly, I find that a single facility-wide unit consisting of medical nurses and clerical employees is an appropriate unit.

IV. CONCLUSIONS AND FINDINGS

Based upon the entire record in this matter and in accordance with the discussion above, I conclude and find as follow:

1. The hearing officer's rulings made at the hearing are free from prejudicial error and are affirmed.
2. The Employer is engaged in commerce within the meaning of the Act, and it will effectuate the purposes of the Act to assert jurisdiction in this case.
3. The Union involved claims to represent certain employees of the Employer.
4. A question affecting commerce exists concerning the representation of certain employees of the Employer within the meaning of Section 9(c)(1) and Section 2(6) and (7) of the Act.
5. The following employees of the Employer constitute a unit appropriate for the purpose of collective bargaining within the meaning of section 9(b) of the Act:

All full-time and regular part-time LPN's, CNA's, CMA's, check-in clerks, check-out clerks, check-in and check-out clerks, lead office clerk, medical records clerk, switchboard operators, receptionists, insurance referral clerks, billing clerks, and transcriptionists employed by the Employer at its facilities located in Norton, Wise and Clintwood, Virginia, but excluding all physicians, RN's, nurse practitioners, certified registered nurse anesthetists, pharmacists, pharmacy technicians, and professional employees, guards and other supervisors as defined by the Act.

V. DIRECTION OF ELECTION

The National Labor Relations Board will conduct a secret ballot election among the employees in the unit found appropriate above. The employees will vote whether or not they wish to be represented for purposes of collective bargaining by United Steel, Paper & Forestry, Rubber, Manufacturing, Energy, Allied Industrial & Service Workers

International Union (USW). The date time, and place of the election will be specified in the notice of election that the Board's Regional Office will issue subsequent to the Decision.

A. Voting Eligibility

Eligibility to vote in the election are those in the unit who were employed during the payroll period ending immediately before the date of this Decision, including employees who did not work during that period because they were ill, on vacation, or temporarily laid off. Employees engaged in any economic strike, who have retained their status as strikers and who have not been permanently replaced are also eligible to vote. In addition, in an economic strike which commenced less than 12 months before the election date, employees engaged in such strike who have retained their status as strikers but who have been permanently replaced, as well as their replacements are eligible to vote. Unit employees in the military services of the United States may vote if they appear in person at the polls.

Ineligible to vote are (1) employee who have quit or been discharged for cause since the designated payroll period; (2) striking employees who have been discharged for cause since the strike began and who have not been rehired or reinstated before the election date; and (3) employees who are engaged in an economic strike that began more than 12 months before the election date and who have been permanently replaced.

B. Employer to Submit List of Eligible Voters

To ensure that all eligible voters may have the opportunity to be informed of the issues in the exercise of their statutory right to vote, all parties to the election should have access to a list of voters and their addresses, which may be used to communicate with

them. Excelsior Underwear, Inc., 156 NLRB 12367 (1966); NLRB v. Wyman-Gordon Company, 395 U.S. 759 (1969).

Accordingly, it is hereby directed that within 7 days of the date this Decision, the Employer must submit to the Regional Office an election eligibility list, containing the full names and addresses of all the eligible voters. North Macon Health Care Facility, 315 NLRB 359, 361 (1994). This list must be of sufficiently large type to be clearly legible. To speed both preliminary checking and the voting processes, the names on the list should be alphabetized (overall or by department, etc.). Upon receipt of the list, I will make it available to all parties to the election.

To be timely filed, the list must be received in the Regional Office, 4035 University Parkway, Suite 200, P.O. Box 11467, Winston-Salem, North Carolina, 27116-1467, on or before **January 13, 2006**. No extension of time to file this list will be granted except in extraordinary circumstances, nor will the filing of a request for review affect the requirement to file this list. Failure to comply with this requirement will be grounds for setting aside the election whenever proper objections are filed. The list may be submitted by facsimile transmission at (336) 631-5210. Since the list will be made available to all parties to the election, please furnish a total of **two** copies, unless the list is submitted by facsimile, in which case no copies need be submitted. If you have any questions, please contact the Regional Office.

C. Notice of Posting Obligations

According to Section 103.20 of the Board's Rules and Regulations, the Employer must post the Notices to Election provided by the Board in areas conspicuous to potential voters for a minimum of 3 working days prior to the date of the election. Failure to

follow the posting requirement may result in additional litigation if proper objections to the election are filed. Section 103.20(c) requires an employer to notify the Board at least 5 full working days prior to 12:01 a.m. of the day of the election if it has not received copies of the election notice. Club Demonstration Services, 317 NLRB 349 (1995). Failure to do so estops employers from filing objections based on non-posting of the election notice.

VI. RIGHT TO REQUEST REVIEW

Under the provisions of Section 102.67 of the Board's Rules and Regulations, a request for review of this Decision may be filed with the National Labor Relations Board, addressed to the Executive Secretary, 1099 14th Street, N.W., Washington, D.C. 20570. The Board in Washington must receive this request by **January 20, 2006**. The request may not be filed by facsimile.

Dated at Winston-Salem, North Carolina, this 6th day of January, 2006.

/s/ Patricia L. Timmins
Patricia L. Timmins, Acting Regional Director
National Labor Relations Board
Region 11
4035 University Parkway, Suite 200
P. O. Box 11467
Winston-Salem, North Carolina 27116-1467